

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN WILLIAM CRISMORE**, on February 15, 1999 at 3:20 P.M., in Room 325 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. William Crismore, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Cole (R)  
Sen. Lorents Grosfield (R)  
Sen. Tom Keating (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Glenn Roush (D)  
Sen. Mike Taylor (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Larry Mitchell, Legislative Branch  
Jyl Scheel, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 412, 2/15/1999; SB 413,  
2/15/1999; SB 462, 2/15/1999  
Executive Action: SB 412

#### **HEARING ON SB 413**

**Sponsor:** SENATOR DUANE GRIMES, SD 20, CLANCEY

Proponents:

Rebecca Watson, Attorney for Gough, Shanahan, Johnson & Waterman,  
providing testimony for Western Environmental Trade Assoc.  
John Bloomquist, Montana Stockgrowers Association  
Al Kington, Helena  
Bill Snoddy, McDonald Gold Project  
Patrick Heffernan, Montana Logging Association  
Chris Gallus, Montana Chamber of Commerce  
Jill Andrews, Montana Mining Association  
Frank Crowley, ASARCO  
Jim Mockler, Executive Director, Montana Coal Council

Opponents:

Anne Hedges, Montana Environmental Information Center  
Harley Harris, Attorney General's Office  
Mike Cooney, Secretary of State  
Janet Ellis, Montana Audubon  
Lee Arbuckle, Montana League of Women's Voters  
Rusty Harper, representing State Auditor Mark O'Keefe and Member  
of State Land Board and also speaking for Nancy Keenan, OPI  
Jerry Wells, Montana Council of Trout Unlimited  
Van Jamison, Montana Wildlife Federation  
Don Judge, AFLCIO  
Aaron Browning, Northern Plains Resource Council  
Stan Frasier, Helena  
Denise Roth Barber

Opening Statement by Sponsor:

SENATOR DUANE GRIMES, SD 20, CLANCEY, stated SB 413 is an important piece of legislation he is sponsoring on behalf of many industries that have found the **Montana Environmental Policy Act (MEPA)** to be overly cumbersome, overly expensive, overly time consuming, unwieldy, unworkable and unfair. The industries who provide most of the high paying jobs in Montana say **MEPA** is one of the factors chasing industry away from Montana and into the welcoming arms of other states. Several provisions of the bill are also contained in **HB 142** which was introduced by **REP. SHIELL ANDERSON**.

The purpose of the bill is to clarify when it is necessary to conduct an Environmental Impact Statement as opposed to the more streamlined Environmental Assessment. It is also to define critical terms such as cumulative impact, which has been left largely to the courts. The current open-ended nature of **MEPA** creates an endless cycle of environmental analysis that is never

quite complete, never quite adequate, never quite scientifically valid, never quite inclusive and never quite defensible in court.

As our mines, sawmills, oil rigs and other high paying employers have left the state, our standard of living left as well. This is all about jobs and economic growth in Montana. He feels this is one bill that can have the most profound, immediate impact on that of any that may be voted on this session.

**Proponents' Testimony:**

**Rebecca Watson, Attorney for Gough, Shanahan, Johnson & Waterman, providing testimony today for Western Environmental Trade Association** spoke in support of **SB 413** as per **EXHIBIT(nas37a01)**.

**John Bloomquist, Montana Stockgrowers Association,** spoke in support of **SB 413** stating this was not an effort to take public participation away from the **MEPA** process. **MEPA** is important in terms of scoping and identifying the environmental issues a project may have. One must recognize the law has become a literal bastion for litigation, injunctions, stopping projects and programs. When **MEPA** is read literally, it is very difficult to imagine a more vague and nebulous law in terms of statutory language. He reviewed some of the provisions between pages 3 and 4 of the bill that are designed to establish what a **MEPA** case is really about for the courts. This bill is an effort to finally put some sideboards on a law that has been around, been litigated, that will be litigated in the future and an effort to balance environmental review with the economic benefits of many projects.

*{Tape : 1; Side : A; Approx. Time Counter : 0 - 24.7; Comments : Microphone was accidentally shut off at the beginning of Mr. Bloomquist's testimony.}*

**Al Kington, Helena,** spoke in support of the bill as per **EXHIBIT(nas37a02)**.

**Bill Snoddy, McDonald Gold Project,** quoted from the **MEPA** handbook, "**MEPA** is not a statute that controls or sets regulations for any specific land or resource use. It is not a device for preventing industrial or agricultural development. If implemented correctly and efficiently, **MEPA** should encourage and foster economic development that is environmentally and socially sound." McDonald Gold Project is a case in point of how **MEPA** does not work. He referred to **EXHIBIT(nas37a03)** stating their permit application of November, 1994, consisted of 43 volumes and 9000 pages of data. Sixteen months later the Department declared

the application complete. They were told to do the work in advance and spend the money now as it would shorten the time frame that is required to prepare an EIS. The cost of preparation of their permit application was over \$500,000. When work stopped on their EIS preparation in August, 1998, they had \$2.5 million into preparation of an EIS beyond the \$500,000. The state told them just before they quit they could expect the EIS to require another \$2.5 to \$4 million to complete, at that particular time. They were asked to pay a downpayment of \$538,000 before work could continue. This is about \$25,000 more than the original EIS was supposed to cost.

**MEPA** is a good law. It is a law that works to protect Montana's environment and Montana's people. It is out of control and being used as an obstructionist tool. That is why this legislation is so important and he encouraged a DO PASS.

**Patrick Heffernan, Montana Logging Association**, spoke in support of **SB 413** as per **EXHIBIT (nas37a04)**.

**Chris Gallus, Montana Chamber of Commerce**, spoke in support of **SB 413**. **MEPA** was created so that as a community we could reach sound environmental decisions based on real issues. It is being used as an obstructionist tool. This bill will help avoid many of those problems.

**Jill Andrews, Montana Mining Association**, spoke in support of **SB 413**. The permitting process in Montana is out of control and no longer functions as it should to permit mining or protect the environment. Provisions in **MEPA** have been used to delay projects and file court actions. Delays are expensive. It takes many years to get a mine permitted. The ASARCO project near Noxon has been trying to permit a copper and silver mine for over 10½ years. It has been delayed by one environmental organization after another. After 10½ years of delaying this project in Montana, several of these same environmental groups have asked the Governor of Idaho to intervene. This bill would go a long way in eliminating judicial and other delaying tactics and she encouraged a DO PASS recommendation.

*{Tape : 1; Side : A; Approx. Time Counter : 24.7 - 39.7; Comments : Microphone was accidentally shut off during Ms. Andrews testimony so a portion is missing.}*

**Frank Crowley, ASARCO**, stated he did not feel there was anyone who would suggest that in the last 25 years there has not been an enormous amount of change in the State of Montana. He pointed out, to think that a law written 25 years ago does not

occasionally need to be updated and refined is to ignore that changing reality.

**Jim Mockler, Executive Director, Montana Coal Council**, pointed out two things: 1) time to business is money. 2) most activities governed by an Environmental Impact Statement will require an environmental permit. The permit is designed to protect the environment. **MEPA** has been abused and he hopes this is a step forward to fix it.

*{Tape : 1; Side : A; Approx. Time Counter : 39.7 - 42; Comments : None.}*

**Opponents' Testimony:**

**Anne Hedges, Montana Environmental Information Center**, stated this bill does fundamentally change **MEPA**. It fundamentally changes the way environmental impacts of state actions are analyzed and does vary significantly from the current rules. If mining is the problem, she encouraged addressing that specifically. She pointed out problems they have with the definition section regarding cumulative impact, proposal for project, and significant impact. With all those issues under consideration, they strongly oppose this bill.

**Harley Harris, Attorney General's Office**, spoke on behalf of Attorney General Joe Mazurek in his capacity as a member of the State Board of Land Commissioners. They are also concerned about a process that seems to be happening, with respect to **MEPA** in both this bill and **HB 142**, where a few anecdotal problems, concerns or isolated cases are being taken and extrapolating from those isolated anecdotes, broad scale revisions to this law. If the goal is to streamline and clarify, which they would concur in, they would suggest a more thoughtful and focused process be engaged. Their major concern with the bill is on page 2, lines 15 & 16 in deletion of the word "unquantified" and replacing with "quantified". It seems that strikes at the very core of what **MEPA** has intended to do which is to be a forward looking statute to set state government toward a forward looking path. They encourage the committee to look at modifications to **MEPA** over a longer term and involve more parties than moving forth with this bill.

**Mike Cooney, Secretary of State**, spoke in opposition to the bill as per **EXHIBIT (nas37a05)**.

**Janet Ellis, Montana Audubon**, spoke in opposition to the bill and based her testimony on handout **EXHIBIT (nas37a06)**. Page 1 of the handout describes the **MEPA** lawsuits from 1989 to 1999. The

maximum lawsuits for all state agencies in any one year was four lawsuits. Page 2 shows documentation of the 15,000 decisions made over the last ten years and the agencies in which they have occurred. This data was obtained from Environmental Quality Council records. Page 3 is a memo given to House Natural Resource Committee regarding **HB 142** indicating the lawsuits DNRC had been involved with in the last ten years. It is curious where they indicate no new evidence was allowed to be given to the court, they won every lawsuit. If the Court allowed new evidence, they lost every lawsuit. Is **MEPA** about a process to look at environmental impacts or is this bill about trying to win lawsuits for the state?

**Lee Arbuckle, Montana League of Women Voters**, spoke in opposition to **SB 413** as per **EXHIBIT (nas37a07)**.

**Rusty Harper, representing State Auditor Mark O'Keefe and Member of State Land Board**, spoke in opposition to **SB 413**. It is **Mr. O'Keefe's** opinion, as member of the Land Board for six years, that there have not been significant problems with **MEPA** in lawsuits. If the law were to be improved, as the proponents have suggested, he would strongly encourage the Attorney General's amendments proposed for **HB 142** where much of that language is present in this bill as well.

**Mr. Harper** also spoke on behalf of **Nancy Keenan, Office of Public Instruction**, stating she was in opposition to the bill for similar reasons.

**Jerry Wells, Montana Council of Trout Unlimited**, spoke in opposition to **SB 413**. His comments were focused on changes to page 2, lines 15 & 16 of the bill regarding "presently quantified". Biological systems are dynamic and do not lend themselves easily to quantification.

**Van Jamison, Montana Wildlife Federation**, spoke in opposition to **SB 413**. In the introduction it was suggested industry is leaving Montana because of **MEPA**. He thought it was inferred in that comment that perhaps other states do not have similar kinds of legislation and you could go to another state and avoid this type of environmental analysis. The **National Environmental Policy Act (NEPA)** covers all 50 states and each state also has a state environmental policy act, some with more stringent rules than Montana's. He had concerns with limiting the courts' discretion with regard to evidence. He is not certain the bonding provision goes far enough. There are many other provisions in the bill they object to and they urge the committee DO NOT PASS this bill.

**Don Judge, Montana State AFLCIO,** spoke in opposition to **SB 413**. When they spoke in support of the mining industry at the cyanide hearings they submitted two resolutions from their convention. Resolution #1 stated their opposition to the I-137 ballot issue. Resolution #2 stated their support of the industries if they complied with current environmental laws. Their convention also unanimously adopted the position saying they should exceed current environmental laws. The labor movement does not support anything that would make the environmental protection laws and **MEPA** insignificant for the workers they represent. They do not feel this legislation is a step in the right direction.

*{Tape : 1; Side : B; Approx. Time Counter : 0 - 38; Comments : None.}*

**Aaron Browning, Northern Plains Resource Council,** spoke in opposition to the bill and submitted written testimony as per **EXHIBIT (nas37a08)**.

**Stan Frasier, Helena,** stated it was said in the opening statement that we need to make it easier for businesses to do business. We have had that in the past and did not get good results. Montana has some of the largest Superfund sites in the country as a direct result of making it easy on business. Some of these things have very long term impacts and we need to be careful in how they are done. He does not think we need to make it harder for citizens to get involved in their government.

**Denise Roth Barber, Montana Sierra Club,** spoke in opposition to the bill and stated they share the concerns of those expressed already. She would like to encourage the committee to find out what current projects would be affected by the retroactive language in the bill on Section 2 (iv) on page 4, lines 6-23.

*{Tape : 2; Side : A; Approx. Time Counter : 0 - 3; Comments : None.}*

**Questions from Committee Members and Responses:**

**SENATOR COCCHIARELLA** asked if **SEN. GRIMES** was aware that **Environmental Quality Council (EQC)** has studied and on different occasions reviewed the rules for **MEPA** in 1976, 1980 and 1988.

**SEN. GRIMES** stated he was aware of that. **SEN. COCCHIARELLA** asked if there was a reason why this bill was not brought to the **EQC**?

**SEN. GRIMES** stated the legislation was not ready soon enough to bring it before the council. He also understands that council has it's political dynamics as well and this legislation was generated by a genuine concern for rural Montana.

**SEN. COCCHIARELLA** stated she disagreed when he said **EQC** has a political dynamic. She feels it is one of the best interim committee bipartisan processes that this legislature has.

**SEN. GRIMES** stated he stood to be corrected as he had never been on **EQC**.

**SEN. COCCHIARELLA** said the bill on page 3, lines 18 and 19, really bothered her. Who really has authority and the decision making responsibility with that language? **SEN. GRIMES** said it will follow the normal chains of command and the normal decision making ladder that it should. There won't be individuals, who are not fully qualified, making decisions at a lower level, those will be passed up. He referred the question to **Ms. Watson**.

**SENATOR COCCHIARELLA** asked if they intended, in this language, to take away the responsibility from a director for the decision of significance when that director has the responsibility of that decision. **Ms. Watson** stated no. The purpose was to clearly set out it was the agency director that bears the ultimate responsibility. She agreed the language could perhaps be clarified so it is clear that it is the director of the agency that is permitting the action who is responsible for making the significance call, and not some other agency that comments in the process.

**SENATOR WILSON** referred to **Mr. Jamison's** remarks regarding Montana being burdensome to industry. He questioned the thinking on that and how we stacked up with other states in general?

**Ms. Watson** stated that as Chairman of the Public Lands Committee of the American Bar Association she felt qualified to answer the question. Environmental permitting all around the country is often a topic of discussion. The combined effect of I-122, I-125, I-137, and the slow permit processing under **MEPA**, have branded Montana with a sign not open for business. **SEN. WILSON** stated he views I-122 as separate from what is being discussed here today. **Ms. Watson** said she could direct her remarks to **MEPA** but he had asked a general question to a general statement by **Mr. Jamison**. Focusing on **MEPA** and the permitting process, Montana's reputation for permit processing in the large mines is extremely slow. Some have been in the works for 5, 6 or 10 years and at great expense. 30 out of 50 states do have some type of **MEPA** law.

**SENATOR MCCARTHY** questioned p.4 Section A-B of the bill. If this were enacted where would the burden of proof for the claim be in this section? **Ms. Watson** stated the burden of proof remains with the plaintiff, i.e. person charging there has been some error by the agency. **SEN. MCCARTHY** asked if it restricted the ability of



the court to consider new issues or evidence than were in there before? **Ms. Watson** stated yes. There is an agency process with a commenting period and there are challenges that can be brought forward at that time. If the information is provided at that time, the agency then has time to respond and take corrective action. This language reflects how the law should be applied. Administrative actions are very limited in court review. You are not allowed to put on a new evidentiary case and are limited to agency record. Sometimes the court has been more than liberal in allowing in new evidence and the agency is blind sided at the time of the hearing with new evidence, having failed to be provided with this evidence earlier when they could have dealt with it in the EIS process. **SEN. McCARTHY** said it states they will no longer hold an evidentiary hearing on this. To the layperson she felt she needed more clarification. **Ms. Watson** said that, although it sounds harsh that an evidentiary hearing is not held, that is the way that all **MEPA** and **NEPA** cases are to be handled. The court looks at the Administrative Record to see if the requirements have been met under **MEPA**.

**Closing by Sponsor:**

**SENATOR DUANE GRIMES, SD 20, CLANCEY**, thanked the committee for a good hearing. He pointed out this was not isolated anecdotes. Every lawsuit has a tremendous impact on industries all across this state. He feels this would have only served the public well if you do not mind being 50th in so many economic factors. Economies are on the line everywhere because of the protracted environmental Impact Statement process and the mischief that occurs through the process. Amending **SB 413** will make the process more streamlined and user friendly.

**{Tape : 2; Side : A; Approx. Time Counter : 3 - 19; Comments : None.}**

**HEARING ON SB 412**

**Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS**

**Proponents:**

**Bud Clinch, Director, Department of Natural Resources and Conservation**

**Cary Hegreberg, Montana Wood Products Association**

**Patrick Heffernan, Montana Logging Association**

**Opponents: None.**

**Opening Statement by Sponsor:**

**SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS,** stated **SB 412** was a negotiation between the forest products industry and the forestry division of DNRC which amends the statute dealing with logging slash to reduce the hazard of an accidental wild fire. The origin of the law goes back to the 1900's. It calls DNRC to adopt the rules for the treatment of slash to abate fire hazards. It changes the method for calculating the amount of bond which must be posted by large operators that have master agreements. Sites with Streamside Management Zones will automatically be inspected by the Department to ensure compliance with the law. It gives the Department a little more teeth in enforcing the law.

**Proponents' Testimony:**

**Bud Clinch, Director, Department of Natural Resources and Conservation,** stated this bill is the compilation of two bills. One was initially instituted by the Department and the second one by industry. They got together and developed a compromise bill. This bill does two things: 1) It increases the Department's enforcement authorities for habitual noncompliers. 2) It lessens the restrictions and requirements for those people that have habitually been good players. He thinks that reflects what government should be about. He commented further on the new section for change in bond amounts and the subsequent ability for partial releases. He urged the committee's support of the bill.

**Cary Hegreberg, Montana Wood Products Association,** spoke in support of **SB 412**. This bill has been negotiated with DNRC over the course of the past several months. They feel this is an equitable and fair system of administering this law. They feel the bill is necessary for them and the Department to keep up with changes in technology and changes in societal expectations. They urged a DO PASS recommendation.

**Patrick Heffernan, Montana Logging Association,** spoke in support of **SB 412** as per his written testimony **EXHIBIT (nas37a09)**.

**Opponents' Testimony: None.**

**{Tape : 2; Side : A; Approx. Time Counter : 19 - 31.7; Comments : None.}**

**Questions from Committee Members and Responses:**

**SENATOR GROSFIELD** questioned Section 6 where fees are being set at .15 per 1000. Is that the current fee? **Mr. Clinch** stated

that is the current fee and was an editorial change the drafters believed to be more appropriate in that section.

**Closing by Sponsor:**

**SENATOR BARRY "SPOOK" STANG, SD 36, ST. REGIS**, stated this was a compromise between the Department and Wood Products industry which started last June. He urged the committee's support.

**{Tape : 2; Side : A; Approx. Time Counter : 31.7 - 34; Comments : None.}**

**HEARING ON SB 462**

**Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER**

**Proponents:**

**Sandy Stash, Vice President, ARCO**

**Frank Crowley, ASARCO**

**Denise Mills, Remediation Division Administrator, Department of  
Environmental Quality**

**Steve Wade, Burlington Northern and Santa Fe Railway**

**Don Allen, Western Environmental Trade Association**

**Chris Allen, Montana Chamber of Commerce**

**Opponents:**

**Anne Hedges, Montana Environmental Information Center**

**Opening Statement by Sponsor:**

**SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER**, stated **SB 462** is a bill that creates environmental control easements. The intent is to create a simple, effective, reliable and permanent mechanism for dealing with hazardous waste and substances that must remain on a site somewhere. Under current law there are some tools available to protect public health, safety and welfare or the environment, such as restrictive covenants and easements but the reliability of this is not always clear. Environmental control easements will be clear, reliable and effective.

This bill is patterned after the Montana Conservation Easement statute and provides for the acquisition of environmental control easements by public entities, either federal, state or local, and by certain qualifying private organizations. The primary purposes of these easements will be to monitor the protection of sites to ensure those sites are not used for purposes that might

threaten the public health, safety and welfare or the environment.

An easement can only be created and implemented if DEQ approves its creation or EPA. This bill provides a specific means for DEQ to do this and it is anticipated that a similar procedure would be instituted with EPA. The approval process is meant to ensure that environmental control easements will not be used for the purpose of shielding companies from their cleanup responsibilities, rather they are to provide a mechanism to limit exposure to hazardous materials by the public, etc., when it is not technologically feasible to remediate the property. This bill tries to limit the exposure to hazardous materials after remediation has been completed and when the remedial structures are in place, i.e. soil caps, drainage structure, etc. There is a lot of flexibility built in to meet the site specific needs of particular sites.

**Senate Bill 462** could be a reliable and permanent solution for dealing with hazardous wastes that must remain at a site. He encourages the committee's support.

**Proponents' Testimony:**

**Sandy Stash, Vice President in charge of environmental cleanup, ARCO**, stated ARCO has been very involved in both federal and state cleanups for the last decade or more. Two things are very apparent to them: 1) when a cleanup is done, institutional controls or a way to manage the cleanup that has been put in place, is absolutely necessary at every site. 2) No really good mechanism currently exists in state law to deal with these.

This bill requires state approval, it makes companies that have responsibility for these cleanups, full partners with the State of Montana in approving the appropriate mechanism on a forward going basis. ARCO is a strong proponent of the bill and feels it will go a long ways toward improving the cleanups in the State of Montana.

**Frank Crowley, ASARCO**, stated **HB 331** is a similar bill which authorizes local Boards of Health to adopt institutional controls. Major cleanups were started in this state many years ago. These cleanups are now moving and coming to the end stages. At the end stages, you begin looking for some mechanisms that will both help to protect the environment and public health but also not require total active cleanup. He is impressed with the thought that has gone into the bill on all the various aspects and most especially private property. This bill is not limited to just Superfund sites but it has the same objective which is to

provide, flesh out and complete the types of solutions we need to put these sites finally to a state of total resolution and completion and let the properties move into the future with the cleanups that have been done. He urges support of the bill and thinks it will be an excellent compliment to **HB 331**.

**{Tape : 2; Side : A; Approx. Time Counter : 34 - 44.3; Comments : None.}**

**Denise Mills, Remediation Division Administrator, Department of Environmental Quality**, spoke in support of the bill as per **EXHIBIT (nas37a10)**.

**Steve Wade, Burlington Northern and Santa Fe Railway Company**, spoke in support of **SB 462** because it creates an option when cleaning up a site. At the end of the cleanup you want mechanisms established that protect the public and also the environment from people going in and messing with either the remedy or the stuff that is still in the ground. Enforcement of those mechanisms are questionable and unclear. They feel this bill goes a long way in clearing up some of those problems to arrive at the result of protecting the public and the environment.

**Don Allen, Western Environmental Trade Associaton**, spoke in support of **SB 462**. He feels the reason the bill is needed is to give more options. Buzz words in the bill such as minimizing, likelihood of exposure, preventing, insuring and requiring are all positive words that lead to better solutions, better options and better ideas as people work together to take care of these problems that exist and how to deal with them. The Conservation Easement approach is one more tool for the tool box.

**Chris Allen, Montana Chamber of Commerce**, spoke in support of **SB 462** because it helps minimize the adverse health effect and exposures and prevents future disturbances.

**Opponents' Testimony:**

**Anne Hedges, Montana Environmental Information Center**, stated she was a weak opponent because she felt there were things that could be done to the bill to cause her not to oppose it. Whenever there is an institutional control bill they view it with a wary eye as it means contamination will be left in place. They want to make sure there are enough safeguards in place to guarantee the protection of the public and adequate notification of the public. Some of her concerns dealt with allowing qualified private organizations to hold these easements as opposed to just government entities. They feel the requirements of a qualified

private organization are not very strong and they want to ensure there are enough safeguards in place that the public will be protected throughout the whole easement term. They also feel there needs to be some type of public notification for those people who have expressed an interest in the site regarding the contamination and that an easement is being put into place and the terms. In New Section 9 it says "may" be renewed at the end of 15 years, why would you not want to renew it if a threat does not exist? She is also concerned with an easement holder responsible for enforcing violations of the easement. This is why there is concern for the private entity holding the easement and feels the public sector would be better to control the easement. When there is a violation there is no mechanism for the state to know about that violation and if held by the state it is all public documentation with access to the information.

**{Tape : 2; Side : B; Approx. Time Counter : 0 - 14.8; Comments : None.}**

**Questions from Committee Members and Responses:**

**SENATOR COLE** questioned how many sites or easements are in the state? **Ms. Mills** stated under the state Superfund law they have established institutional controls at 16 of 289 sites. They are trying to look at institutional controls as part of a final remedy at more sites. Currently there are about 180-200 sites on their state Superfund list so anywhere from 1/3 to 1/2 more could have an institutional control. Whether they would all be easements would be uncertain. This bill provides a mechanism for implementing an enforceable institutional control. **SEN. COLE** questioned if these only applied to Superfund areas? **Ms. Mills** said the intent of this legislation is not to be constrained to the Superfund laws but an environmental control easement would be established as part of a process that is approved by an agency.

**SENATOR McCARTHY** questioned the rationale on the term of 15 years as well as "shall" be renewed in Section 9. **Ms. Stash** stated the term of 15 years comes right out of the Conservation Easement statute. In originally drafting this bill they tried to parallel existing law as much as possible. Regarding "shall", something that would say "where the threat no longer exists" would be a very appropriate add on. In some instances a particular site may not need these in perpetuity and they wanted the option not to have them if they were no longer needed. **SEN. McCARTHY** regarding page 7, Section 13, who is the local point person who coordinates with local planning authority? **Ms. Stash** stated in most local jurisdictions it would be the planning director.

**SENATOR MAHLUM** questioned Section 10, lines 16-19, and asked for an explanation of what would happen? **SENATOR GROSFIELD** stated the list was a variety of tools that may be used with advertising being one. Digging a hole for a sign post could be of concern on some sites. He was not certain if there was any other reason they were talking about advertising there. **SEN. MAHLUM** stated the majority of signs would be within 100 feet of a roadway where they would be visible to passing people. He would be concerned if this particular wordage were to preclude where advertising could be done. Is there some way they can be assured this would not be a problem? **SEN. GROSFIELD** stated he thought the key was on line 17 with the word "may" which applies to the whole list. In this context it means "may prohibit" not "shall prohibit".

**Closing by Sponsor:**

**SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER,** stated he felt **Ms. Hedges** had made several good points in her testimony. The changes she requested were not real significant and, in some cases, were meant to be part of the bill and, in other cases, were oversight. The proponents of the bill are more than willing to address each point she brought up to improve the bill.

The bottom line is how do you protect what you have done after spending the money for cleanup and remediation. This bill addresses how to protect what you have done. It is a good bill and he hoped the committee would see likewise.

**EXECUTIVE ACTION ON SB 412**

**Motion/Vote:** **SEN. COCCHIARELLA** moved that **SB 412 DO PASS**. Motion carried 9-0.

**{Tape : 2; Side : B; Approx. Time Counter : 14.8 - 27.4; Comments : None.}**

**ADJOURNMENT**

Adjournment: 5:50 P.M.

---

SEN. WILLIAM CRISMORE, Chairman

---

JYL SCHEEL, Secretary

WC/JS

**EXHIBIT (nas37aad)**